



GUIDELINES ON THE PROTECTION OF CHILD VICTIMS OF TRAFFICKING

UNICEF technical notes

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Health, Education, Equality, Protection
ADVANCE HUMANITY

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UNICEF Guidelines on the Protection of Child Victims of Trafficking

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GUIDELINES ON THE PROTECTION OF CHILD VICTIMS OF TRAFFICKING

UNICEF Technical Notes

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List of Acronyms

CEE/CIS	Central and Eastern Europe and the Commonwealth of Independent States
CRC	United Nations Convention on the Rights of the Child (1989)
ECPAT	End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes (previously End Child Prostitution in Asian Tourism)
EU	European Union
ICRC	International Committee of the Red Cross, also CICR Comité international de la Croix-Rouge
ILO	International Labour Office and International Labour Organization
IOM	International Organization for Migration
OHCHR	United Nations Office of the High Commissioner for Human Rights
OSCE	Organization for Security and Co-operation in Europe
SEE	South and East Europe
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNODC	UN Office on Drugs and Crime (the UN secretariat for the Convention against Transnational Organized Crime and its Trafficking Protocol) runs a Global Programme against Trafficking in Human Beings
WHO	World Health Organization

Glossary

Durable solution	Long-term arrangements for child victims of trafficking as opposed to short-term solutions (such as reflection period, emergency assistance and temporary residence permits). More generally, the term takes three forms: local integration, return to the country or place of origin or third country resettlement. Durable solutions can also be seen as a prevention of re-trafficking.
Immigration official	Includes border police and others involved in processing new arrivals at airports, ports and other frontier crossing points.
Internal trafficking	Trafficking within the same country (between regions/ districts, etc).
Law enforcement official	Police officers or other officials responsible for enforcing the law.
National Referral Mechanism	Procedure designed to ensure coordination among government ministries, NGOs and others that are involved in caring for victims of trafficking and making decisions in regards to them.
Non-national	Person from another country, i.e., foreigner.
Offence	'Offence' and 'crime' are used interchangeably in the Guide and do not imply that one is more serious than the other.
Palermo Protocol	See Trafficking Protocol.
Refoulement	The expulsion or return of a refugee to the frontiers of territories where his or her life or freedom is threatened because of his or her race, religion, nationality, membership of a particular social group or political opinion.
Separated child	Separated from both parents or from their legal or customary primary caregiver, but not necessarily from other relatives. These may include children accompanied by other adult family members.
Trafficker	A person who engages in trafficking in persons as defined by the UN.
Trafficking Protocol	UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, linked to the UN Convention against Transnational Organized Crime (2000). This Protocol is sometimes referred to as the 'Palermo Protocol'.
Unaccompanied child	An unaccompanied child or minor is a child who is separated from both parents and other relatives and is not being cared for by an adult who, by law or custom, is responsible for doing so.

CONTENTS

INTRODUCTION	7
1. DEFINITION	9
2. GENERAL PRINCIPLES	10
2.1 RIGHTS OF THE CHILD	10
2.2 BEST INTERESTS OF THE CHILD	10
2.3 RIGHT TO NON-DISCRIMINATION	10
2.4 RESPECT FOR THE VIEWS OF THE CHILD	10
2.5 RIGHT TO INFORMATION	11
2.6 RIGHT TO CONFIDENTIALITY	11
2.7 RIGHT TO BE PROTECTED	12
2.8 DEFINITION OF ROLES AND STEPS	12
2.9 COORDINATION/COOPERATION	13
3. IDENTIFICATION	14
3.1 PRO-ACTIVE IDENTIFICATION MEASURES	14
3.2 PRESUMPTION OF AGE	15
4. APPOINTMENT OF A GUARDIAN	16
4.1 APPOINTMENT PROCESS	16
4.2 RESPONSIBILITIES OF THE GUARDIAN	17
5. REGISTRATION AND DOCUMENTATION	18
5.1 INITIAL QUESTIONING	18
5.2 INITIAL ACTION	19
5.3 INTERVIEWING THE CHILD VICTIMS ABOUT THEIR EXPERIENCE	19
6. REGULARIZATION OF STATUS	21
7. INTERIM CARE AND PROTECTION	22
7.1 CARE AND PROTECTION	22
7.2 ACCOMMODATION IN A SAFE PLACE	23
8. INDIVIDUAL CASE ASSESSMENT	25
8.1 TRACING	25
8.2 RISK ASSESSMENT	26
8.3 BEST INTEREST DETERMINATION	26
9. IMPLEMENTATION OF DURABLE SOLUTION	28
9.1 LOCAL INTEGRATION	28
9.2 RETURN TO THE COUNTRY OR PLACE OF ORIGIN	28
9.2.1 <i>Reception and reintegration</i>	30
9.3 RESETTLEMENT AND INTEGRATION IN A THIRD COUNTRY	30
9.4 FOLLOW UP.....	31
10. ACCESS TO JUSTICE	32
10.1 CRIMINAL PROCEEDINGS.....	32
10.2 CIVIL PROCEEDINGS	33

10.3 PREVENTION OF DEPRIVATION OF LIBERTY	33
10.4 VICTIM/WITNESS SECURITY AND PROTECTION.....	33
11. COST OF PROCEEDINGS, FINANCIAL ASSISTANCE, REPARATION, COMPENSATION.....	34
12. RESEARCH AND DATA COLLECTION	36
12.1 ETHICAL PRINCIPLES	36
12.2 ETHICAL QUESTIONS	37
12.3. MISINFORMATION AS A COPING STRATEGY	37
BIBLIOGRAPHY	39
APPLICABLE INTERNATIONAL CONVENTIONS:	39
OTHER SELECTED HUMAN RIGHTS INSTRUMENTS AND GUIDELINES.....	40
OTHER PUBLICATIONS.....	42

BOXES

Box 1 Trafficked children, victims, survivors.....	9
Box 2 Confidentiality and risks	11
Box 3 Registration and Documentation	18
Box 4 Balanced assistance	22
Box 5 Individual determination of international protection needs.....	23
Box 6 Protection in Emergencies.....	24
Box 7 Best Interest Determination.....	27
Box 8 Reunification	29
Box 9 Restoration and Compensation: a protection issue.....	35
Box 10 Risk Assessment in doing research	37

INTRODUCTION

The following guidelines set out standards for good practice with respect to protection of and assistance to trafficked children.

These guidelines are based on international human rights instruments and look at the protection of trafficked children from their identification up to their recovery and integration. They shall be used together with other guidelines and tools focussing on prevention.

At the national and regional levels, these guidelines should be used as a platform for developing policies and practices, taking into consideration local circumstances, constraints and resources. The cross-border nature of trafficking may necessitate fostering regional ownership where mechanisms can further the protection of child victims and facilitate implementation at the national level. International, multilateral and bilateral cooperation can also play an important role.

The aim of these guidelines is to assist governments and State actors, international organizations and NGOs or other service providers. The main responsibility for protection of victims lies with the government. In situations where the government lacks or has insufficient capacity to fulfil its responsibility, such duty may be delegated to or shared with international organizations and NGOs. Non-institutional actors such as families, individuals, and communities may play an important and concrete role in protecting trafficked children.

These guidelines are the result of an extensive process started and developed at the local and regional levels by UNICEF and its partners. In response to reports of child trafficking within South Eastern Europe (SEE) and from South Eastern Europe to other parts of Europe, in 2003 UNICEF developed a set of "Guidelines for Protection of the Rights of Child Victims of Trafficking in South Eastern Europe," based on international standards. Since their endorsement by the Stability Pact Task Force on Trafficking for South Eastern Europe and adopted by member States (2003), the guidelines were widely used to inform policy and practice against trafficking in children across Europe. Minimum standards endorsed in the Guidelines informed the Council of Europe Convention on Action Against Trafficking in Human Beings, and the Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings.

In West Africa, the UNICEF Regional Office, in collaboration with other UN organizations in the region, such as ILO, UNODC, with other international organizations and NGOs such as IOM, Plan, Save the Children and ENDA adapted the original SEE guidelines to the West African context. Following a regional validation of the guidelines by the Economic Community of West African States (ECOWAS) and the Economic Community of Central African States (ECCAS) at the Regional Expert Meeting on Trafficking in Libreville (May 2006), Benin was the first country to organize a national workshop in order to adapt these guidelines.

In Asia, the UNICEF SEE guidelines were used as major reference for the development of "Proposed Guidelines for the Protection of the Rights of Trafficked Children in Southeast Asia", based on broad consultation at the regional and national levels with field organisations in 7 countries of the region. The process was initiated and coordinated by Asia Acts (a regional network of 76 NGOs working at the grass root level).

Based on these experiences and in order to enhance the global application of Guidelines, the original text was harmonized with recent conventions and guidelines in the area of trafficking, comments from the Committee on the Rights of the Child, and recent guidelines on other related areas such as: separated and unaccompanied children (and in particular the Inter-agency Guiding

Principles on Unaccompanied and Separated Children, developed by UNICEF, Save the Children, IRC, World Vision, UNHCR and IRC), action on children in the criminal justice system, child victims and witness protection, reparation for victims, ethics in research and data collection, national referral mechanisms, and protection of children in emergencies.

A workshop was convened at the UNICEF Innocenti Research Centre to consult with UNICEF colleagues from different Country and Regional Offices, Headquarters and National Committees who are actively involved in projects for the protection of children victims of trafficking.

Finally the draft text of the guidelines has been shared for comments and suggestions among other UN agencies, international organizations and NGOs.

1. DEFINITION

Child trafficking is the act of recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation regardless of the use of illicit means, either within or outside a country.¹

All different forms of exploitation shall be considered within the definition, including: exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery or servitude, the removal of organs, use of children associated with armed groups or forces, begging, illegal activities, sport and related activities², illicit adoption, early marriage or any other forms of exploitation.³

The consent of a child victim of trafficking to the intended exploitation is irrelevant even if none of the following illicit means have been used: force or other forms of coercion, abduction, fraud, deception, the abuse of power or of a position of vulnerability, or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person.⁴

A child victim of trafficking is any person trafficked under 18 years of age.⁵

Whenever applicable, these guidelines should also apply also to children who are conceived and subsequently born of trafficked persons.⁶

Box 1 Trafficked children, victims, survivors

The terms “child victims of trafficking” and “trafficked children” are being used throughout this paper to emphasize that harm has been perpetrated against children. Many practitioners prefer to use the term “survivors” to emphasize the resilience of persons who have been exploited or abused. For the purposes of these Guidelines, these terms will be used interchangeably.

Source: IASC, *Guidelines for Gender-based Violence Interventions in Humanitarian Settings*, IASC, 2005.

Footnotes in the text highlight references to articles and comments in international conventions and guidelines. They do not necessarily imply specific quotation. For a full reference (titles, authors, year of publication) see the bibliography.

¹ Palermo Protocol art.3; Refer also to the Council of Europe Convention art.4

² Such as the use of children in Camel Jockey related activities.

³ Palermo Protocol art.3; CRC art.34; ILO182 art.3; Hague Convention#33 art. 1

⁴ Palermo Protocol, art.3; The use of illicit means is

⁵ Palermo Protocol art.3; CRC art.1; Council of Europe Convention art.4

⁶ SEA Guidelines art.2.3.2

2. GENERAL PRINCIPLES

These principles shall be taken into account during all stages of caring for and protecting trafficked children in the country or place of origin, transit or destination, and in cases of internal trafficking.⁷

2.1 Rights of the Child

All actions undertaken in relation to child victims shall be guided by applicable human rights standards and in particular by the principles of protection and respect for children's rights as set out in the United Nations Convention on the Rights of the Child (CRC).⁸

State obligations under the CRC apply to each child within the State's territory and to all other children subject to its jurisdiction. Therefore, the enjoyment of rights stipulated in the Convention is not limited to children who are citizens of a State, but must also be available to all children - including trafficked children - irrespective of their nationality, immigration status or statelessness.⁹

The involvement of child victims in criminal activities shall not undermine their status as both a child and a victim, or their related rights to special protection.¹⁰

States are required not only to refrain from measures infringing on children's rights, but also to take positive measures to ensure the enjoyment of these rights without discrimination.¹¹

Obligations deriving from the Convention apply to all branches of government, including executive, legislative and judicial. They include the obligation to establish national legislation and administrative structures; and the necessary research, information, data compilation and comprehensive training activities to support such measures.¹²

2.2 Best Interests of the Child

In all actions concerning child victims, whether undertaken by public or private social welfare institutions, police, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.¹³

2.3 Right to Non-Discrimination

Child victims have the right to protection, whether they are non-nationals, nationals or residents of the country in which they find themselves. They must be considered as children first and foremost. Every child shall have, without discrimination of any kind as to race, sex, language, religion, ethnic or social origin, birth, or other status, including immigration status, the right to such measures of protection as are required by his or her status as a minor.¹⁴

2.4 Respect for the Views of the Child

⁷ Palermo Protocol art.3; HCHR Guidelines p.3

⁸ SEE Guidelines art.2.1

⁹ CRC art.2; CRC General Comment 06 c.12

¹⁰ CRC art.37, art.40

¹¹ See in detail CRC General Comment 06 c.13

¹² GC05 c13

¹³ CRC art.3; Inter-Agency Guidelines p.17

¹⁴ CRC art.2; Inter-Agency Guidelines p.17

A child victim who is capable of forming his or her views has the right to express those views freely in all matters affecting him or her. Respect for the views of the child will be maintained in relation to the legal process, interim care and protection, and the identification and implementation of a durable solution, particularly in decisions concerning the child's possible return to the family, country or region of origin.¹⁵

The views of the child victim shall be sought and given due weight in accordance with his or her age and maturity.¹⁶

The child shall be provided the opportunity to be heard in any judicial and administrative proceedings affecting him or her, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.¹⁷

2.5 Right to Information

Child victims shall be provided with accessible information regarding their situation and their rights, including protection mechanisms, other available services, and the processes of family reunification and/or repatriation.¹⁸

Information shall be provided in a language that the child victim is able to understand. Suitable interpreters shall be provided whenever a child victim is questioned or interviewed, or whenever she or he requests it.¹⁹

2.6 Right to Confidentiality

All necessary measures shall be taken to protect the privacy and identity of child victims to ensure the safety and security of the victim and his or her family. The name, address and all other information that could lead to the identification of the child victim or his or her family members shall not be revealed to the public or media. Exceptions may be made in circumstances such as to facilitate the tracing of family members or otherwise secure the well-being and protection of the child, with the informed consent of the child. Information about a child victim that could endanger the child or the child's family members shall not be disclosed in any case.²⁰

Box 2 Confidentiality and risks

For children victims of trafficking, contacting the authorities of the country or place of origin should be done with caution, to avoid increasing the child's risk and/or the risk of his or her family of being targeted by the authorities.

Organizations must ensure the permanent preservation of their records in such a manner as guarantees confidentiality. They may decide to centralize their records under the responsibility of a competent authority.²¹

States, international organizations, NGOs and other service providers shall promote measures encouraging the media to protect the private life and identity of victims through self-regulation or

¹⁵ CRC art.12; Inter-Agency Guidelines p.17

¹⁶ CRC art.12

¹⁷ CRC art.12

¹⁸ CRC art.9, art.13; Palermo Protocol art.10

¹⁹ CRC art.40; CRC General Comment 06 c.25, c.71

²⁰ Palermo Protocol art.6; CRC art.16; Council of Europe Convention art.11; CRC General Comment 06 c.29-30

²¹ Inter-Agency Guidelines p.39; Record should always follow the child to ensure proper follow-up.

other regulatory measures. Media and journalists shall have direct access to child victims of trafficking only under exceptional circumstances, if and only if the guardian has decided that it will be in the best interest of the children and, where appropriate, the child consents.²²

2.7 Right to be protected

Child victims are entitled to special protection measures, both as victims and as children, in accordance with their specific rights and needs.²³

The State shall protect and assist child victims and to ensure their safety.²⁴

For some trafficked children where there are indications that they cannot return to their country or place of origin due to a well founded fear of persecution, refugee status determination and the granting of corresponding status will be the most appropriate avenue to pursue. In any event all trafficked children should be properly informed of their right to seek and enjoy asylum.²⁵

All decisions regarding child victims shall be taken expeditiously.²⁶

In emergencies such as wars and natural disasters, if large numbers of children are separated from their parents or other relatives, priority should be given to the most vulnerable, whether accompanied or unaccompanied, taking into account that the latter are likely to be more vulnerable.²⁷

2.8 Definition of roles and steps

The State should take positive action to combat child trafficking and to protect and assist trafficked children.²⁸

In defining roles and responsibilities for the protection of child victims of trafficking, the State shall strengthen the existing child welfare system and avoid duplication.²⁹

The State shall define the competent authorities, judicial and administrative bodies, in charge of each of the tasks from identification to determination of the best durable solution.³⁰

The State shall designate a competent authority to assist the relevant judicial and administrative bodies in the acquisition of information and documentation necessary to arrive at an informed decision regarding the future of the child victim.³¹ The same competent authority can carry out multiple tasks

Where the State has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct competent authority to serve the same function for that region or territory. Competent authorities shall ensure the speedy and proper execution or transmission of requests received.³²

²² Council of Europe Convention art.11

²³ CRC art.20

²⁴ CRC art.3(2)

²⁵ Refugee Convention art.1, art.33

²⁶ CRC General Comment 06 c.21

²⁷ Inter-Agency Guidelines p.16

²⁸ CRC art.35

²⁹ Inter-Agency Guidelines p. 37

³⁰ CRC art.9, art.19, art.25; CTOC art.18; Hague Convention#28 art.13

³¹ SEE Guidelines art. 3.8.2

³² CTOC art.18

2.9 Coordination/Cooperation

Trafficking is a regional and global phenomenon that cannot always be dealt with effectively at the national level. International, multilateral and bilateral cooperation plays an important role, particularly between countries involved in different stages of the trafficking cycle.³³

Complementarity and cooperation among all organizations and institutions concerned are critical for the care and protection of child victims.³⁴ Co-operation between governmental and non-governmental sectors should be based on a clear delineation of responsibilities and transparency. Due to the potentially complex legal situations which may arise, it is advisable that cooperation and specific roles be outlined by a written agreement among the key actors.³⁵

Specific lead roles and responsibilities of UN agencies, ICRC, other international organizations and NGOs shall be defined, particularly in situations where a competent authority may not exist, such as in emergencies, conflicts or natural disasters.

All relevant ministries and government bodies (including judicial, police, migration, asylum, and social service authorities, Ministry of Social Affairs, Ministry of Home Affairs and Ministry of Foreign Affairs) involved in the protection of child victims shall adopt policies and procedures which favour information-sharing and networking between agencies and individuals working with child victims.

Each State should designate their own liaison officer/office who shall be responsible for cross-border linkage and referral to the appropriate authorities for immediate response to cases of cross-border trafficking.³⁶

Existing central authorities for the protection of children can be identified as the competent authority in charge of the tasks described in these Guidelines.³⁷

Other co-operative frameworks, such as national referral mechanisms, through which State actors fulfil their obligations to protect and promote the human rights of trafficked children, shall be developed.³⁸

During emergencies such as war or natural disasters, dialogue and coordination mechanisms shall begin in the early phases of the emergency, and be maintained throughout the process.³⁹

Where the State has regions, provinces or territories with separate systems and distinct competent authorities (such as in the case of federal states), it may designate a distinct authority to ensure proper coordination.

³³ OHCHR Trafficking Guidelines g.11

³⁴ Council of Europe Convention art.32; Inter-Agency Guidelines p.18

³⁵ OSCE National Referral Mechanism Handbook p. 69

³⁶ SEA Guidelines art.3.3.1

³⁷ CTOC; Hague Convention#28; Hague Convention#33 art.6

³⁸ OSCE National Referral Mechanism Handbook p.15

³⁹ Inter-Agency Guidelines p.18

3. IDENTIFICATION

The identification of someone as a “child victim of trafficking” shall not depend on the identification, prosecution or detection of traffickers or criminals.⁴⁰

The identification of a child as a victim of trafficking and the provision of assistance to him or her shall not depend on his or her willingness or ability to provide the police with information or to testify against his or her traffickers.⁴¹

A child’s identification as a child victim of trafficking shall not reduce or restrict his or her entitlement to seek asylum, to be recognized as a refugee or as legal migrant.⁴²

3.1 Pro-active identification measures

The State should develop and adopt effective procedures for the rapid identification of trafficked children. These may include the strengthening of birth registration procedures and the listing and recording of missing and exploited children.⁴³

Child victims of trafficking are only rarely able to extricate themselves independently from their exploitative situation. They may be identified either by government actors such as law enforcement agencies, or by NGOs and local social-welfare organizations, particularly if such individuals are trained accordingly and if a system of victim referral is in place. Models of pro-active identification measures shall be identified according to the local situation.⁴⁴

Immigration, border and law enforcement authorities shall establish procedures to identify child victims at frontiers and at any other location.⁴⁵

Social service, health or education authorities shall contact the relevant law enforcement authority when they know or suspect that a child is exploited or trafficked or is at risk of exploitation or trafficking.⁴⁶

NGOs/civil society organizations shall contact relevant law enforcement authorities and/or social service authorities when they know or suspect that a child is being exploited or trafficked or is at risk of exploitation or trafficking.⁴⁷

Special efforts are needed to share information and coordinate interventions between agencies and individuals (including law enforcement, health, education, social welfare agencies, and NGOs), to ensure that child victims are identified and assisted as soon as possible.⁴⁸

⁴⁰ Palermo Protocol art.3

⁴¹ Council of Europe Convention art.12; HCHR Guidelines c.8; OSCE National Referral Mechanism Handbook p.88

⁴² CRC art.22; Council of Europe Convention art.14; In this context, it is important for the police to be trained in identification of children who may have been trafficked, in protection concerns which may arise, in the referral of such individuals to the appropriate authorities, including to an asylum procedure, and in relevant country or place of origin information to assist the identification process.

⁴³ SEA Guidelines art.3.1.2

⁴⁴ OSCE National Referral Mechanism Handbook p.60

⁴⁵ SEE Guidelines art.3.1.1

⁴⁶ *Ibidem*

⁴⁷ *Ibidem*

⁴⁸ CTOC art.10; Inter-Agency Guidelines p.36

Children trafficked for exploitation in armed groups or forces shall be demobilized on a priority basis during any identification and separation operation.⁴⁹

3.2 Presumption of age

Where the age of the child is uncertain and there are reasons to believe that the victim is a child, the presumption shall be that the victim is a child.⁵⁰

Pending verification of the victim's age, the victim will be treated as a child and accorded all special protection measures stipulated in these guidelines and shall not be removed from the territory until the identification process has been completed.⁵¹

Verification of the victim's age shall be done in a child-friendly and, whenever possible, independent and impartial way. Age determination shall be based on birth registration or official documents. In case of lack of certificates, countries shall develop non harmful techniques based on a holistic examination of the child. Verification of the victim's age shall take into account the child's physical appearance, his or her psychological maturity, (acknowledging the possibility of faster maturing processes due to traumatic or grave life circumstances and specific cultural background), the victim's own statements, available documentation, and checks made with embassies and or other relevant authorities.⁵²

No action to verify the age of the child shall place the child or his or her family in danger or abuse confidentiality. The use of x-ray, being potentially harmful, should be done only for clinical need.⁵³

⁴⁹ CRC General Comment 06 c.56

⁵⁰ CRC General Comment 06 c.31

⁵¹ SEE Guidelines art.3.1.2

⁵² CRC General Comment 06 c.31

⁵³ CRC General Comment 06 c.31; Ros Levenson & Anna Sharma, *The Health of Refugee Children. Guidelines for Paediatricians*, Royal College of Paediatrics and Child Health, November 1999, p.14.

4. APPOINTMENT OF A GUARDIAN

4.1 Appointment process

As soon as a child victim is identified, a guardian shall be appointed by a competent authority to accompany the child throughout the entire process until a durable solution that is in his or her best interests has been identified and implemented.⁵⁴

If the trafficked child is not unaccompanied, care should be taken to assess whether his or her current guardian is indeed suitable to ensure the child's best interests are fully represented. If the existing guardian cannot represent the child's best interests, another guardian shall be appointed.

States shall define the competent authority in charge of appointing the guardian (guardianship service), the legal status of the guardianship (legal guardian, temporary guardian, adviser/representative, social worker or NGO worker), and all the necessary protocols and procedures.

In appointing the guardian, the competent authority shall take into consideration whether the child is unaccompanied, separated, or with his or her parents. Agencies or individuals whose interests could conflict with those of the child, or any individual or institution who is accused of or complicit in the trafficking of the child, cannot be eligible for guardianship.⁵⁵

In appointing the guardian, the competent authority shall give due weight to the child's views and shall keep the child informed.⁵⁶

The guardianship service will be held accountable for the acts of the appointed guardian. Review mechanisms shall be put in place to monitor the quality of the exercise of guardianship in order to ensure the best interests of the child are being represented throughout the decision-making process and, in particular, to prevent abuse.⁵⁷

The State shall ensure that the guardianship service is empowered to take any action that is in the best interests of the child victim.⁵⁸

All law enforcement personnel involved and any other relevant official services or NGOs shall be informed of the contact details of the guardianship service.⁵⁹

Individuals appointed as guardians must have relevant child protection experience, knowledge of child rights/human rights and an understanding of the specific needs of child victims, including those specific to gender.

Guardians shall be given specialized training, professional support and appropriate assistance in the performance of their responsibilities.⁶⁰

⁵⁴ CRC General Comment 06 c.21, c.33; Council of Europe Convention art.10. The appointment of a guardian may be perceived as a challenging task in many developing countries due to administrative and financial constraints. Viable solutions at the local level may be explored.

⁵⁵ CRC General Comment 06 c.33, c.37, c.55

⁵⁶ CRC General Comment 06 c.25; CRC art.12

⁵⁷ CRC General Comment 06 c.35

⁵⁸ CRC art.18

⁵⁹ SEE Guidelines art.3.3.3

⁶⁰ CRC art.18; Council of Europe Convention art.29; CRC General Comment 06 c.95

In large-scale emergencies, where it will be difficult to establish guardianship arrangements on an individual basis, the rights and best interests of separated children should be safeguarded and promoted by States and organizations working on behalf of these children.⁶¹

Such guardianship shall be maintained until the child has reached the age of majority, or has permanently left the territory and/or jurisdiction of the State⁶², or is returned to his or her parents or legal guardian within the territory of the State.⁶³ Whenever possible, guardians should be the same gender of the child victim and the same person shall accompany the child victim as guardian throughout the entire process.

4.2 Responsibilities of the guardian

Regardless of the legal status of the individual appointed as the guardian, their responsibilities shall include:⁶⁴

1. to ensure that all decisions taken are in the child's best interests;
2. to ensure that the child has appropriate care, accommodation, health care provisions, psycho-social support, education and language support;
3. to ensure that the child has access to legal and other representation where necessary;
4. to consult with, advise and keep the child victim informed of his or her rights;
5. to contribute to the identification of a durable solution in the child's best interests;
6. to keep the child informed of all the proceedings;
7. to establish and maintain a link between the child and the various organizations which may provide services to the child;
8. to assist the child in family tracing;
9. to ensure that if repatriation or family reunification is possible, it is done in the best interests of the child;
10. to ensure the relevant paperwork is completed.

The guardian shall have the right to refuse the child to give testimony in criminal and civil (judicial) proceedings if this is in the best interests of the child.⁶⁵

The guardian shall help the child throughout the law enforcement procedures. If the guardian feels at any time during police interviews that the child should have benefit of legal counsel, he or she shall have the right and responsibility, to inform the police of the need to terminate the interview until legal counsel may be present.⁶⁶

In cases where children are involved in asylum procedures or administrative or judicial proceedings, they shall, in addition to the appointment of a guardian, be provided with legal representation.⁶⁷

Until a durable solution has been found for the child's future, the child shall remain under the responsibility of the appointed guardian.

⁶¹ CRC General Comment 06 c.38; Interagency Guidelines p.47

⁶² It will be important to plan the transitioning to new guardian if children are sent to another country, in order to enhance cooperation and coordination during the process.

⁶³ CRC General Comment 06 c.33

⁶⁴ CRC art.20; CRC General Comment 06 c.25, c.28

⁶⁵ SEE Guidelines art.3.2.2

⁶⁶ *Ibidem*

⁶⁷ CRC General Comment 06 c.36; Inter-agency Guidelines p.47

5. REGISTRATION AND DOCUMENTATION

Box 3 Registration and Documentation

Registration is the compilation of key personal data: full name, date and place of birth, nationality, father's and mother's name, former address and present location. This information is collected for the purpose of establishing the identity of the child, for protection and to facilitate tracing.⁶⁸

Documentation is the process of recording further information in order to meet the specific needs of the child, including tracing, and to make plans for his or her future. This is a continuation of the registration process and not a separate undertaking.

Source: Inter agency Guidelines, pg. 33.

The law enforcement authorities shall register children at the time of the initial questioning.⁶⁹

The law enforcement authorities shall immediately open a case file on the child and begin to collect information, which will facilitate judicial proceedings, assessment of the child's best interest, and the resulting determination of the most appropriate solution for the child.⁷⁰

A personal file for each trafficked child shall document all the actions and information and shall follow the child throughout the entire process.⁷¹

The State will define the competent authority in charge of storing the information and all the procedures on access and use of information, including confidentiality of data.

5.1 Initial questioning

Registration and documentation shall be done following the best interests of the child. Child victims shall be questioned in a manner which respects their dignity and capacity, and special safeguards shall be developed to avoid any thoroughly abusive interrogation process for children.⁷²

Only specially trained members of the law enforcement authorities shall question child victims. Child victims shall be questioned by officers of the same sex, except when there is cultural evidence that this would not be in the best interests of the child.⁷³

The law enforcement authorities shall avoid questioning a child victim in the place where the child has been exploited and/or in the presence or physical proximity to any suspected trafficker. Initial questioning shall be carried out in a place where the child feels secure.⁷⁴

Initial questioning of a child victim of trafficking shall seek to collect biographical data and social history information (such as name, age, nationality, parents' names and contacts, country or place of origin, former and current address). Other information regarding the experience of the child

⁶⁸ See also the Inter-Agency Registration Form for Unaccompanied and Separated Children.

⁶⁹ See CRC art.7,art.8

⁷⁰ SEE Guidelines art.3.3.1

⁷¹ See also: Inter-Agency Guidelines p.35

⁷² SEE Guidelines art.3.3.2

⁷³ UNHCR Bid Guidelines p.23

⁷⁴ SEE Guidelines art.3.3.2

while trafficked, and any knowledge he or she may have acquired may not be sought at this point.⁷⁵

Interviews with the child should assess if the child is in need of international (refugee) protection. When necessary, referral to the competent asylum authorities and appointment of a legal representative shall be ensured.

5.2 Initial action

Following the identification of a child victim, law enforcement authorities shall contact guardianship services as soon as possible to appoint a guardian and organize the transfer of the child victim to a shelter/safe location for accommodation.⁷⁶

In accordance with the principle of family unity, trafficked girls with babies should be kept together, as well as siblings and children trafficked with their parents.⁷⁷

In the process of appointing a guardian and in collecting data and information, the law enforcement authorities shall protect the child's privacy and confidentiality.⁷⁸

The transfer of the child from the law enforcement authorities to the guardianship service shall be documented. This procedure shall confirm the child handover to ex officio guardianship and recognize the right of the guardian to request a halt to proceedings, to speak to the child alone, and take all necessary measures that are in the best interests of the child.

At no time should the trafficked child be placed in the same room or in direct contact with the suspected trafficker/s.

5.3 Interviewing the child victims about their experience

Trafficked children are often exposed to a number of risk factors (malnutrition, maltreatment including sexual exploitation, exposure to violence/vicarious traumatization, abandonment, lack of supervision, confinement, persecution, etc.) that warrant immediate intervention by child protection/social welfare authorities in an integrated multidisciplinary response, featuring a joint (law enforcement/child welfare) interview with the child.

The express consent of the trafficked child and his or her parent or guardian or social welfare service provider should be acquired before conducting the interview.

Prior to the interview with the trafficked child, the investigator/officer should inquire whether prior interviews have already been conducted by any person or agency. Double questioning shall be avoided and information obtained in one interview shall be made available (as appropriate and if applicable) to other responsible actors who need this information with due regard to principles of privacy and confidentiality. Law enforcement authorities shall defer to the guardian for information that does not legally require the first person testimony of the child.

⁷⁵ CRC General Comment 06 c.100. See also, UNHCR Executive Committee Conclusion No. 90 (LII), 2001, paragraph (s), in which the Executive Committee of UNHCR expresses its concern that many victims of trafficking are rendered effectively stateless due to an inability to establish their identity and nationality status.

⁷⁶ SEE Guidelines art.3.3.3

⁷⁷ CRC General Comment 06 c.40; Close friends may be also kept together. Bonds between peers due to their common experiences are often very strong, and they may help each other in "recovering" from trauma. This will vary, but should be kept in mind when moving the children to a safe shelter. On the other hand, siblings can also be abusive of each other.

⁷⁸ SEE Guidelines art.3.3.3

As much as possible, the investigator/officer and interpreter/translator, should be of the same gender as the trafficked child, dressed in civilian clothes, trained in administering child friendly/sensitive interview methods and knowledgeable about the issue of child trafficking. The confidentiality of proceedings and the protection of the trafficked child's right to privacy should at all times be respected.

Law enforcement authorities shall only question child victims about their trafficking experience in the presence of the appointed guardian.⁷⁹

The interview should be conducted in a language understood by the trafficked child. Where this is not possible, a qualified translator/interpreter should be provided.

Law enforcement authorities shall be trained in interviewing children and shall limit the length and scope of questioning so as to minimize further trauma or psychological distress to the child victim.

As consent of the child to being trafficked is not relevant for legal purposes, law enforcement authorities should not ask questions about the child's consent to the exploitation. Information gathered while questioning the child victim can under no circumstances be used against the child for criminal liability. The child's consent cannot remove the child's status as a victim.⁸⁰

The judicial authorities shall ensure that child victims are not subjected to criminal procedures or sanctions for offences related to their situation as trafficked persons including violations of migration laws.

⁷⁹ SEE Guidelines art.3.3.4

⁸⁰ Palermo Protocol art.3; See also, the second report of the Special Rapporteur on trafficking in persons, "Integration of the Human Rights of Women and a Gender Perspective", E/CN.4/2006/62, 20 February 2006, paragraphs 37–43.

6. REGULARIZATION OF STATUS

States shall adopt legislative or other appropriate measures that permit victims of trafficking who are not nationals/residents of the country in which they find themselves to remain in their territory, temporarily or permanently.⁸¹

States shall grant to child victims of trafficking a reflection period to recover and escape the influence of traffickers and/or to make an informed decision on cooperating with the competent authorities.⁸² No deportation shall be carried out during this period.

The competent authority shall establish policies and procedures to ensure that child victims, who are not nationals/residents of the country in which they find themselves, are automatically granted a temporary residence permit which entitles them to stay in the country on a legal basis until a best interests assessment is conducted and a durable solution is found.⁸³

In conjunction with the competent authority and the social service authorities, the guardian shall be responsible for initiating application procedures for the temporary residence permit, and for acting on behalf of the child in any administrative presentations or procedures as needed. Such status shall be afforded to the child victim until the relevant judicial and administrative bodies have made a decision regarding the final placement of the child.

The temporary residence permit for child victims, when legally necessary, shall be renewed in accordance with the best interests of the child.⁸⁴

Following a temporary residence permit, trafficked children may qualify for a long-term or permanent residence permits on humanitarian grounds if local integration is identified as the durable solution in the best interests of the child.⁸⁵

Not all trafficked children are unaccompanied or separated. If the child is together with his or her parents, or if there are substantial reasons to believe that family members of the child victim are at risk in the home country, such family members should be entitled to temporary or permanent residence on the same conditions as the trafficked child.⁸⁶

Some trafficked children may be eligible for refugee status under the 1951 Convention, and States shall ensure that trafficked children who wish to seek asylum have access to asylum procedures.⁸⁷

⁸¹ Palermo Protocol art.7

⁸² Council of Europe Convention art.13

⁸³ SEE Guidelines art.3.6

⁸⁴ Council of Europe Convention art.14

⁸⁵ CRC General Comment 06 c.89; Convention against Torture art.3; Refugee Convention art.33

⁸⁶ CRC General Comment 06 c.23

⁸⁷ CRC General Comment 06 c.53

7. INTERIM CARE AND PROTECTION

7.1 Care and protection

Guardians, in cooperation with social service authorities and NGOs, shall assess the needs of each child victim, and make recommendations for immediate actions and long-term solutions.

Child victims have the right to receive immediate care and protection including security, food, and accommodation in a safe place, access to social and health services, psychosocial support, legal assistance and education.⁸⁸

Care and assistance shall be appropriate to the child's cultural identity and origin, gender and age.⁸⁹

Appropriate assistance shall be provided to children with special and specific needs, particularly in cases of disability, psychosocial distress, illness and/or pregnancy.

Social service authorities with qualified personnel shall provide care for child victims, in cooperation with competent international organizations and NGOs.

States shall, particularly where government capacity is limited, accept and facilitate the assistance offered by UNICEF, UNESCO, UNHCR and other United Nations agencies within their respective mandates, as well as, where appropriate, other competent intergovernmental organizations or non-governmental organizations in order to meet the needs of child victims of trafficking.⁹⁰

All agencies and institutions dealing with child victims shall establish training programmes to ensure that staff responsible for the care and protection of child victims understand the child's rights, are age and gender-sensitive, and possess the necessary skills to assist a child throughout the process.⁹¹

Box 4 Balanced assistance

Assistance for trafficked children shall be balanced with assistance for all exploited children. Trafficked children are especially vulnerable, and care should be taken to provide support in a way that does not cause jealousy or stigmatize children. Care must also be taken not to provide incentives for children with families to claim trafficked or separated status or for parents to abandon their children in order to gain benefits either for themselves or for their children.

Adapted from: *Separated Children*, Save the Children, 2004.

⁸⁸ Palermo Protocol art.6 and, more generally, CRC art.20, art.24, art.28, art.29, art.30, art.32

⁸⁹ CRC art.29; CRC General Comment 06 c.42

⁹⁰ CRC art.22(2); CRC General Comment 06 c.43-45

⁹¹ Council of Europe Convention art.9

7.2 Accommodation in a safe place

Child victims shall be in safe and suitable accommodation immediately after their identification.⁹²

If the child is placed in a care center, their address shall never be disclosed to the public. Care centers should have specific rules of child protection/code of conducts and their application should be duly monitored.

Social service authorities, in cooperation with NGOs and international organisations, shall develop minimum standards for the care of child victims.⁹³

Law enforcement facilities such as a detention center, police cell, prison or any other special detention center for children shall be considered as the last resort only after all forms of safe and suitable accommodation and other solutions have been duly considered.

Children shall not be kept with adults unrelated to them, unless this is within the framework of clear foster care arrangements with regular supervision and assessment by qualified persons.⁹⁴

Box 5 Individual determination of international protection needs

The determination of international protection needs is more than an assessment of the state's non-refoulement obligations. A child victim of trafficking may be in need of international protection, including complementary forms of protection. While not all victims of trafficking will fall within the scope of the refugee definition given in Article 1 of the 1951 Convention, there are situations when it is necessary to determine whether the trafficking experience constitutes persecution for reasons of race, religion, or nationality, or membership of a particular social group or political opinion. In such situations, no decision on a durable solution can be made before the refugee status determination has been completed. If a child victim is recognized as having international protection needs, the child may not return to the country or place of origin.

The State is responsible for taking pro-active measures to protect persons who provide care and assistance to trafficked children from reprisals from traffickers.⁹⁵

⁹² In some circumstances, it may be not necessary to move the child from the living arrangement that he or she is found if the condition of exploitation and traffickers can be removed.

⁹³ Inter-Agency Guidelines p.25

⁹⁴ CRC art.37; Special attention should be given to adolescents. In some circumstances, housing a trafficked survivor with individuals who share similar experiences may be advisable over placing the child in a children's facility which may not meet the specific needs of adolescents who have been trafficked.

⁹⁵ SEA Guidelines art.2.8

Box 6 Protection in Emergencies

In large-scale emergencies, where it will be difficult to establish guardianship arrangements on an individual basis, the rights and best interests of children should be safeguarded and promoted by States and organizations working on behalf of these children. Such actions are vital to contain the risk of children becoming victims of trafficking.

1. Conduct a rapid assessment of the situation of children. Within the appropriate mechanisms, monitor, advocate against, report and communicate on severe and systematic abuse, violence and exploitation.
2. Assist to prevent the separation of children from caregivers and facilitate the identification, registration and medical screening of separated children, particularly those under five years of age and adolescent girls. Governments should identify Officers in charge of Child Protection in all major hospitals admitting child patients and in temporary camps.
3. Ensure that family-tracing systems are implemented, with appropriate care and protection facilities.
4. Interim care must be provided to separated children until they are reunited with their families, placed in foster care, or other long-term care arrangements have been made. Interim care should be consistent with the aim of family reunification, balanced with a best interests assessment, and should ensure children's protection and well-being.
5. Promote the child's recovery by providing psychosocial support to strengthen resilience as well as meeting basic needs.
6. Establish procedures to ensure that children who are travelling during emergencies are with their parents or other primary caregivers. The government also can put a temporary moratorium on the adoption of children until all children can be properly identified and the process of family tracing is completed.

The international standard in a crisis is to keep children as close to their family members and community as possible. Staying with relatives in extended family units is generally a better solution than uprooting the child completely.

Child trafficking, sexual exploitation, and extreme forms of child labour may be nothing new in the region affected by disaster and/or conflict. But the breakdown of institutions leaves an opening for unscrupulous and criminal exploitation of the most vulnerable. A quick response of governments to this threat must be made in order to provide that protection.

Sources: CRC General Comment 06 c38; UNICEF, *Emergency Field Handbook*, UNICEF, 2005.

8. INDIVIDUAL CASE ASSESSMENT

Each trafficked child is entitled to have his or her case individually assessed on the basis of his or her best interests to determine the appropriate solution.⁹⁶

A multidisciplinary assessment of the range of risks to the child's well-being shall be conducted to determine whether the child may have been exploited, abused or neglected, or remains at high risk of being exploited.

The individual assessment of the best interests of the child is a continuous process that has particular relevance for trafficked children. Assessment starts from the moment of their identification, and continues throughout the displacement cycle until a durable or long-term solution is implemented. Any decision and action affecting the child, including but not limited to, identification and registration, family tracing, the determination of the most appropriate temporary care arrangement, the appointment of a guardian, monitoring of temporary care arrangements, refugee status determination procedures, and family reunification, must be instilled with considerations for the best interests of the child.⁹⁷

Efforts to find durable solutions in the best interests of child victims of trafficking should be initiated and implemented without undue delay and, wherever possible, immediately upon the identification of a child victim of exploitation.⁹⁸

8.1 Tracing

Tracing is an essential component of any search for a durable solution and should be prioritized except where the act of tracing, or the way in which tracing is conducted, would be contrary to the best interests of the child or jeopardize fundamental rights of those being traced. All those engaged in tracing should use the same approach, with standardized forms and mutually compatible systems. This will facilitate cooperation and information-sharing and prevent duplication of activities.⁹⁹

The child shall be kept informed of tracing efforts and of any progress made.¹⁰⁰

Sharing information within and between countries is essential for tracing. However, the protection and best interests of the child should govern the type of information involved and the extent to which information is shared. The basic principle of information sharing is that the maximum information necessary for tracing should be shared at the minimum risk to the child and the family.¹⁰¹

In situations where tracing activities take place between a number of countries, there should be close coordination, cooperation and joint planning between the governments, the ICRC, UNHCR, UNICEF and other implementing agencies in all countries concerned. This should include the centralization of information.¹⁰²

⁹⁶ SEA Guidelines art.3.5.1; see also CRC art.3

⁹⁷ UNHCR BID Guidelines, p.9

⁹⁸ CRC General Comment 06, paragraph 79

⁹⁹ CRC General Comment 06 c.80 ; Inter-Agency Guidelines p.35

¹⁰⁰ Inter-Agency Guidelines p.35

¹⁰¹ *Ibidem*

¹⁰² *Ibidem*

Where there is a general feasibility of return to the country or place of origin, the competent authority in coordination with the guardian and other relevant accredited State authorities, shall be in contact with the competent authority in the country or place of origin of the child, to acquire the necessary information and documentation to arrive at an informed decision regarding the child's placement. The competent authority shall be helped by the Ministry of Foreign Affairs, and if necessary and not exposing the child to additional risk, with representatives of the embassy of the child's country or place of origin.¹⁰³

At the request of the competent authority in the State or place where the child has been identified, the competent authority in the country or place of origin in charge of tracing, shall, without undue or unreasonable delay, verify whether the child is its national, identify and locate family members, and promptly inform the requesting State of any circumstances which are likely to significantly delay or render impossible the carrying out of the action sought.¹⁰⁴

In order to facilitate the identification of a durable solution which is in the best interests of the child, the competent authority in the country or place of origin shall prepare a file with all the information from the tracing and planned intervention (such as guardianship and reintegration). In order to facilitate the return of the child victim of trafficking, the country or place of origin shall agree to issue travel documents or other authorization as may be necessary to enable the child to travel and re-enter its territory.¹⁰⁵

If it is not possible to identify the country or place of origin, the child victim of trafficking will receive the necessary protection and basic care in accordance with the provisions of national law and on the same basis as child nationals of the host State.

8.2 Risk assessment

When tracing is successful, a risk assessment shall verify that family reunification is in the best interests of the child. In cases where there are serious concerns for the care, protection and well-being of the child, it may be necessary to involve the appropriate local authorities, existing welfare systems, other agencies and local communities for any further action or future support required.¹⁰⁶

In the absence of suitable care provided by parents or members of the extended family, return to the country or place of origin should not take place without advance secure and concrete arrangements of care and custodial responsibilities upon return to the country or place of origin.¹⁰⁷

It is critical to take special measures in situations where children have been involved in armed violence against their own community. Preparations for the reunification of these children must take into account the need to shield them against discrimination, targeted attacks, further recruitment or re-trafficking. Similar measures shall be taken where children have been involved in activities with a high risk of stigma, such as prostitution and sexual exploitation as a result of trafficking.¹⁰⁸

8.3 Best interest determination

¹⁰³ CTOC art.18; *.

¹⁰⁴ Palermo Protocol art.8; CRC art.39; Council of Europe Convention art.16; Council of Europe Convention art.34

¹⁰⁵ Palermo Protocol art.8

¹⁰⁶ Hague Convention#28 art.13; Inter-Agency Guidelines p.37

¹⁰⁷ CRC General Comment 06 c.85

¹⁰⁸ Inter-Agency Guidelines p.38

Once sufficient documentation and information have been gathered, the competent authority in the country where the child is identified shall, in consultation with the child, determine the best solution among the following possibilities: local integration, voluntary repatriation and re-integration to the country or place of origin, or resettlement and integration in a third country.¹⁰⁹

A best interest determination shall be initiated by the competent authority and shall be documented in the child's personal file.¹¹⁰

The ultimate aim in addressing the fate of child victims is to identify a durable solution that addresses all their protection needs, takes into account the child's views and, wherever possible, help them to overcome their situation.¹¹¹

Long-term care arrangements should, as much as possible, favour family and community-based arrangements rather than residential/institutional care.¹¹²

Box 7 Best Interest Determination

The Best Interests Determination (BID) is a formal process with specific procedural safeguards and documentation requirements that is conducted for certain children [...], whereby a decision-maker is required to weigh and balance all the relevant factors of a particular case, giving appropriate weight to the rights and obligations recognized in the CRC and other human rights instruments, so that a comprehensive decision can be made that best protects the rights of children.

Source: UNHCR Guidelines on the Formal Determination of the Best Interests of the Child, UNHCR, 2006, p.32.

The views of the child shall be solicited and taken into account when identifying a durable solution or considering family reunification and/or return to the child's State of habitual residence.

The views of the guardian shall also be taken into consideration.

Ministries, competent authorities and other relevant State authorities shall establish agreements and procedures for collaboration to ensure a thorough inquiry into the child victim's individual, family and country or place of origin to determine the best course of action for the child.

¹⁰⁹ Hague Convention#28 art.13; CRC General Comment 06 c.79, c.80

¹¹⁰ CRC art.3, CRC General Comment 06 p.5

¹¹¹ CRC General Comment 06 c.79

¹¹² SEA Guidelines art.3.5.3

9. IMPLEMENTATION OF DURABLE SOLUTION

Three options are possible for durable solutions: 1) local integration, 2) voluntary repatriation and re-integration to the country or place of origin, or 3) resettlement and integration in a third country.

9.1 Local integration

Local integration is the primary option if return to the country or place of origin is not in the best interest of the child on either legal or factual grounds. Child victims have the right to receive long-term care and protection including full access to health care, psychosocial support, social services and education regardless of whether they are nationals/residents of the country in which they are currently located.¹¹³

The competent authority in cooperation with the social services shall ensure that every child victim has a legal guardian and an individual integration plan.

The competent authority in cooperation with the social welfare authorities of the country where the child victim is, and in consultation with the child and his or her guardian, shall find adequate and durable arrangements for the child.¹¹⁴ Such arrangements shall favour family- and community-based solutions.

Because the decision may include temporary or permanent separation of the child from his or her parents, a formal best interest determination shall be done by the competent authority subject to judicial review.¹¹⁵

Long-term placement shall be decided in the best interests of the child and institutional care should, wherever possible, serve only as a last resort. The child victim of trafficking should have the same rights (including to education, training, employment and health care) as enjoyed by national children. To ensure these rights are fully enjoyed, the host country may need to pay special attention to any additional measures required to address the child's needs.¹¹⁶

Local integration of trafficked children shall be considered from a durable and long-term perspective and shall not be limited to the time the victim is a child. By the age of majority, if no other kind of residence permit can be issued under the conditions laid down in national law (e.g. for employment or study reasons), full regard should be given to their vulnerable status and they should be allowed to remain in the host country with a secure status, whether for humanitarian or practical reasons.¹¹⁷

9.2 Return to the country or place of origin

Child victims who are not nationals/residents of the country in which they find themselves have the right to return to their country or place of origin.

¹¹³ CRC art.2, art.20, art.24, art.28, art.29, art.30, art.32. Some countries have expressed reservations on CRC art.2

¹¹⁴ CRC art.20; CRC General Comment 06 c.90

¹¹⁵ CRC art.9

¹¹⁶ CRC General Comment 06 c.90

¹¹⁷ CRC General Comment 06 c.53

Return to the country or place of origin shall in principle only be arranged if such return is in the best interest of the child. Non-rights-based arguments, such as those relating to general migration control, cannot override best interest considerations.¹¹⁸

The competent authority shall establish agreements and procedures for the safe voluntary return of child victims to their country, or if they have been trafficked within their own country, to their region of origin. The repatriation of a trafficked person should be co-ordinated in advance between the country or place where the child is and the country or place of origin, and may also involve transit countries.¹¹⁹

Return to the country or place of origin should only be considered when safe family reunification can be arranged; or when, having consulted the responsible authorities in the country or place of origin, an adult care-giver or an appropriate governmental or non-governmental institution has agreed and is able to provide immediate protection and care upon arrival.¹²⁰

In the determination of durable solution, child's views regarding his or her future shall be sought and given due weight, including her or his willingness and ability to return to his or her country or place of origin. In each case, the child's evolving mental maturity must be determined in the light of his or her personal, family and cultural background.

States shall establish procedures to ensure that the child is received in the country or place of origin by a guardian appointed by the competent authority in the country or place of origin, and/or the child's parents.

A guardian, in coordination with the competent authority of the country or place of destination, shall accompany the child victim being returned to his or her country or place of origin until placed in the custody of the competent authority of the country or place concerned and/or the child's parents.

Box 8 Reunification

After long separations, when the child is attached to his or her caregiver and/or has no recollection of his or her family, or when families are severely disrupted, reunifications may be delicate and must be carried out slowly and after careful preparation. Preparations for a reunification must be made to minimize possible renewed emotional distress to the child, and taking into consideration risks of stigma and revictimization. In some cases reunification will not be possible, and alternative solutions shall be identified.

Source: *The Lost Ones: Emergency Care and Family Tracing for Children from Birth to Five Years*, UNICEF, 2005.

In order to regulate the return of trafficked children to their country, States shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.¹²¹

¹¹⁸ CRC art.25; CRC General Comment 06 c.84, c.86; Hague Convention#28 art.13; Convention Against Torture art. 3

¹¹⁹ OSCE National Referral Mechanism Handbook p.82

¹²⁰ Inter-Agency Guidelines p.62

¹²¹ CRC art.11

9.2.1 Reception and reintegration

In the country or place of origin, child victims shall have a guardian and are entitled to access long-term care and protection including security, food, accommodation in a safe place, access to health-care, psycho-social support, legal assistance, social services and education with a view to their social reintegration.¹²²

Authorities in the country or place of origin shall not be informed of the status of the child as a victim of trafficking without the explicit consent of the child, where appropriate, or guardian.

Authentic and accurate information shall be provided about appropriate contact information and telephone numbers of NGOs, lawyers, and social welfare agencies that can assist in the country or region of origin.

Additional appropriate assistance shall be provided to children with specific needs, particularly in case of disability, psychosocial distress, illness or pregnancy.¹²³

Child victims shall be cared for by professionals who are appropriately trained, including on gender issues and related needs. Such care shall be provided in cooperation with relevant international and non-governmental organizations.

Social service authorities, in collaboration with the guardian, shall conduct an individual needs assessment for each child victim in order to ensure appropriate and personalised care and avoid risks of re-victimization, stigma and marginalization.

Social service authorities shall ensure that every child victim has a legal guardian and that an individual integration plan is elaborated for each child.

9.3 Resettlement and integration in a third country

Where the safe return of the child to his or her country or place of origin or the integration in the country where he or she is currently located is not possible, or where these solutions would not be in the child's best interests, the relevant authorities shall facilitate and guarantee the child's safe and voluntary transfer to a third country and ensure that arrangements for the child's care comply with the spirit of these guidelines.¹²⁴

Resettlement is particularly called for if it serves family reunification in the resettlement country or if it is the only means to effectively and durably protect a child victim from persecution or other serious human rights violations in the country of stay or origin.¹²⁵

The decision to resettle a child victim of trafficking must be based on an updated, comprehensive and thorough best-interests determination, taking into account ongoing international and other protection needs.

¹²² CRC art.20, art.28, art.39; Inter-Agency Guidelines p.50; Palermo Protocol art.6(3)

¹²³ Criminal Justice System guidelines c.17

¹²⁴ CRC General Comment 06 c.92

¹²⁵ CRC General Comment 06 c.92

9.4 Follow-up

Under the supervision of the competent authority, the social service authorities, in cooperation with relevant international and non-governmental organizations, shall monitor the situation of the individual child following his or her family reunification and/or placement in an appropriate care center.¹²⁶

Where competent authorities have placed a child victim of trafficking for the purpose of care and protection, follow up actions should be made by the competent authority to periodically review the child's treatment and all other circumstances relevant to his or her placement.¹²⁷ Particular attention should be given to the risks of re-trafficking.

Where the child victim of trafficking is reunified with his or her family, follow up visits should be made by the competent authority to the family for an extended period where necessary, until the child reaches the age of majority to make sure that the child is properly treated and reintegrated, and there are no risks for re-trafficking.

¹²⁶ CRC art.25

¹²⁷ CRC art.25; CRC General Comment 06 c.22

10. ACCESS TO JUSTICE

Child victims and witnesses of trafficking require special protection, assistance and support in order to prevent additional hardship as a result of their participation in the criminal justice process and in order to ensure that their best interests and dignity are respected.¹²⁸

10.1 Criminal proceedings

The guardian shall ensure that the child victim is fully informed about security issues, risks and criminal procedures before he or she decides whether or not to testify in criminal proceedings against persons who are suspected of involvement in the exploitation and/or trafficking of the child. The competent authority shall grant a “recovery time” to trafficked children before involving them in the criminal proceedings against the trafficker.¹²⁹

Care for a child victim of trafficking shall not, under any circumstances, be conditional on the child’s willingness to act as a witness.¹³⁰

Judicial procedures against those involved in trafficking shall in no way inhibit or delay family reunification or the return of the child victim to the country or region of origin if it is in the best interests of the child. Speedy trials shall be ensured, unless delays are in the best interests of the child.¹³¹

Direct contact shall be avoided between the child victim and the suspected offender during the process of investigation and prosecution as well as during trial hearings.¹³²

Law enforcement authorities, in cooperation with social services and non-governmental organizations, shall provide necessary legal assistance in a language that is accessible (understandable) to the child.¹³³

Child victims and witnesses shall have their privacy protected as a matter of primary importance.¹³⁴ Measures should be taken to exclude the public and the media from the courtroom when a child is giving testimony.

In terms of giving evidence at trial, countries need to ensure victim witnesses are able to give evidence safely, and make efforts to reduce the secondary trauma that victims often face in a courtroom. Law enforcement authorities, prosecutors, judges and magistrates should apply child-friendly practices including interview rooms designed for children, interdisciplinary services for child victims integrated under one roof, modified court environments that take child witnesses into consideration, use of recesses during a child’s testimony, hearings scheduled at times of day appropriate to the age and maturity of the child, and on-call systems to ensure the child goes to court only when necessary. States shall consider, if necessary, amending their code of penal procedure to take account of the specific needs of a child victim and to allow for, inter-alia, videotaping of the child’s testimony and presentation of the videotaped testimony in court as an official piece of evidence.¹³⁵

¹²⁸ Council of Europe Convention art.28; Guidelines on justice for child victims c.30

¹²⁹ CRC art.39; Council of Europe Convention art.13

¹³⁰ CRC art.2; HCHR Guidelines c.8

¹³¹ Guidelines on justice for child victims c.23, c.51

¹³² Guidelines on justice for child victims c.35; Criminal Justice System guidelines c.49

¹³³ CRC art.40; CRC General Comment 06 p.11

¹³⁴ Guidelines on justice for child victims c.27; Anti Slavery International, *Human Trafficking, Human Rights: redefining victim protection*, Antislavery International, 2002, p.4

¹³⁵ Guidelines on justice for child victims c.27, c.30; Criminal Justice System guidelines c.50

10.2 Civil proceedings

Law enforcement authorities, in cooperation with social services and non-governmental organizations, should make available necessary legal representation to bring action within an appropriate court or tribunal, as well as interpretation into the native language of the child, if necessary.

Child victims should be provided with information regarding their right to initiate civil proceedings against traffickers and other persons involved in their exploitation.

Law enforcement authorities should adopt measures necessary to protect the rights and interests of child victims at all stages of judicial proceedings against alleged offenders, and during procedures for obtaining compensation.

Law enforcement and judicial authorities should undertake to ensure that child victims are provided with appropriate access to justice and fair treatment as well as restitution and compensation including prompt redress.¹³⁶

10.3 Prevention of deprivation of liberty

Child victims of trafficking should not, as a general rule, be detained. Detention cannot be justified solely on the basis of the child being unaccompanied or separated, of their migratory or residence status, or lack thereof. States should further take into account that illegal entry into or stay in a country by a child may also be justified according to general principles of law, where such entry or stay is the only way of preventing a violation of the child's fundamental human rights. More generally, in developing policies on child victims of trafficking and exploitation, States should ensure that penalties are not imposed on child victims on account of their illegal entry or presence in the country.¹³⁷

10.4 Victim/Witness Security and Protection

Child victims who agree to testify shall be accorded special protection measures to ensure their safety and that of their family members in the country or place of origin, transit and destination.

Reference should be made to a child witness's potential need of international protection and possible resettlement due to the risk of retaliation from traffickers against whom he or she has provided evidence.

The competent authority, law enforcement and judicial authorities shall take all necessary steps, including cooperation with authorities outside the country, to protect the child victim and his or her family members. When the victim/witness's protection cannot be ensured in either the country or place of destination or in the country or place of origin, measures shall be taken to allow transfer to and resettlement in a third country.

¹³⁶ Council of Europe Convention art.15; Criminal Justice System guidelines c.43

¹³⁷ Refugee Convention art. 31; HCHR Guidelines c.7; CRC General Comment 06 c.61, c.62

11. COST OF PROCEEDINGS, FINANCIAL ASSISTANCE, REPARATION, COMPENSATION

States shall make available adequate funding for the protection of child victims of trafficking. Financial support for structures and competent authorities shall be formally budgeted.

In order to enhance financial efficiency and results efficacy, States shall plan to strengthen existing child welfare structures and authorities and avoid duplications.

Financial burdens, such as costs associated with judicial and administrative proceedings, local reintegration or travel to the country or place of origin or to a third country, reintegration, follow-up and prevention, shall be shared between States concerned, and modalities shall be defined in bilateral agreements.¹³⁸

No payment, security, bond or deposit, however described, shall be required from the child or his or her family to cover in part or in total, the costs related to identification and registration (including DNA Testing), care and protection, or judicial or administrative proceedings, including legal counsel or representation. Competent authorities and other public services shall not impose any charges on child victims of trafficking in relation to such proceedings.¹³⁹

The financial support for presumed victims of trafficking should be organized in a systematic and sustainable way in order to give them the time necessary to make considered and informed decisions about their future. Financial assistance can be provided in the form of direct assistance (receiving money from social services) or in-kind support, for instance, through the provision of accommodation, food, and counselling.¹⁴⁰

Child victims shall receive reparation irrespective of their immigration status, the legality or illegality of the work/activity they performed, or their cooperation with law enforcement or judicial authorities. Full and effective reparation can include compensation for damages, restitution and repayment, including unpaid wages, rehabilitation, satisfaction and guarantees of non-repetition. The competent authorities shall define readily accessible and child-sensitive procedures for obtaining and enforcing reparation.¹⁴¹

Reparation may include restitution from the offender ordered in the criminal court, aid from victim compensation programmes administered by the State, and damages ordered to be paid in civil proceedings. Where possible, costs of social and educational reintegration, medical treatment, mental health, care and legal services should be addressed. Procedures should be instituted to ensure systematic enforcement of reparation orders and payment of reparation before fines.¹⁴²

The competent authority, judicial or administrative authorities may, where appropriate, direct the person who trafficked or exploited the child, to pay necessary expenses incurred by or on behalf of the child, including travel expenses, any costs incurred or payments made for locating and returning the child, or the costs of legal representation of the applicant. Such payment shall not be deducted from the child victim's entitlements in terms of compensation, repayment, restitution, protection, care and reintegration.¹⁴³

¹³⁸ CRC art.11; OSCE National Referral Mechanism Handbook p.81

¹³⁹ Hague Convention#28 art.22, art.26

¹⁴⁰ OSCE National Referral Mechanism Handbook p.70

¹⁴¹ Palermo Protocol art.6; Council of Europe Convention art.15; Guidelines on reparation 19, 20,21,22; Criminal Justice System guidelines c.35

¹⁴² Guidelines on justice for child victims c.38

¹⁴³ Hague Convention#28 art.26

Trafficked children shall not be prevented from financial recovery simply because the assets are located, for example, in the country or place of destination while the child victim has returned to another country.¹⁴⁴

Box 9 Restoration and Compensation: a protection issue

Failure to return the assets to child victims of trafficking could lead to re-trafficking and revictimization. Children often return home with no money, with lingering debt to the trafficker back home and continuing need to support family members. They often decide to migrate once again in the hopes of avoiding the traffickers and earning money. Unfortunately, some of them end up re-trafficked.¹

Source: *Annotated Guide to the UN Trafficking Protocol*, International Human Rights Law Group, 2002, p.18.

¹⁴⁴ Guide to the Palermo Protocol p.17

12. RESEARCH AND DATA COLLECTION

Following the right to confidentiality, States shall protect data collected on trafficked children. Data protection guarantees the right of the affected person to control the use of their personal information. The definition of personal data includes not only details such as name, address, date of birth, and nationality but also information about personal circumstances, such as activities, finances, and state of health, including such issues as HIV status or pregnancy.¹⁴⁵

Research on child trafficking may be conducted while a child is still in a trafficking situation, when he or she is in the care of a service organization, or once he or she has moved beyond the trafficking experience and has integrated into his or her home or new community. There are substantial ethical issues to be considered while carrying out research, particularly when contacting victims directly.¹⁴⁶

12.1 Ethical principles

Key ethical principles that must be taken into consideration when doing research on child trafficking include:

- *Do no harm:* In all actions concerning child victims undertaken by researchers, the best interests of the child shall be the primary consideration. Researchers are responsible for protecting all research participants from any emotional or physical harm that might result from the research, and to protect their rights and interests. Each situation should be treated as if the potential for harm is extreme until there is evidence to the contrary.¹⁴⁷

It is crucial to know the subject and assess the risks before starting the research. There are risks associated with each stage of the research process, from the initial contact with a child to the public release of information.

- *Informed consent:* Informed consent might be better termed 'informed dissent'.¹⁴⁸ No participant should be persuaded or intimidated into giving consent. NO means NO. Because of the special position of children in society it is necessary to seek the permission of a parent or guardian. However, the consent of an adult alone is not sufficient. Researchers must also obtain the consent of the children themselves.¹⁴⁹
- *Responsibility in providing information:* Trafficked children rarely have the possibility to access information that can benefit their health and safety. When working with extremely disadvantaged individuals, an interviewer is responsible for providing this information, as well as collecting it. When interviewing a victim of human rights violations, such as trafficking, urgent requests for immediate assistance are not infrequent. Offering help can be lifesaving and is an ethical and moral duty. But offering assistance in the wrong way or at the wrong time can backfire or those promising assistance may be unwilling or unable to follow through.¹⁵⁰
- *Avoid raising unrealistic expectations:* Researchers shall be clear and honest about the research and what will be done with the information gathered. Always keep promises made to

¹⁴⁵ OSCE National Referral Mechanism Handbook p.93

¹⁴⁶ See: Handbook on Action oriented Research; Rossi, A., *Ethical Issues in Researching Child Trafficking*, paper for the UNICEF Innocenti Research Centre, 2005; WHO *Ethical and safety recommendations for interviewing trafficked women*, World Health Organization, 2003

¹⁴⁷ WHO *Ethical and safety recommendations for interviewing trafficked women*, World Health Organization, 2003

¹⁴⁸ *What children say: Results of comparative research on the physical and emotional punishment of children in Southeast Asia and the Pacific*, Save the Children, 2005. Ennew, J., and Plateau, D.P., *How to research the physical and emotional punishment of children*, Bangkok, Save the Children Southeast, East Asia and Pacific Region, 2004

¹⁴⁹ Handbook on Action oriented Research, p.21

¹⁵⁰ WHO *Ethical and safety recommendations for interviewing trafficked women*, World Health Organization, 2003

children, adults and communities and do not make promises that cannot be kept, especially about future action programmes that might improve the informant's/respondent's situation.¹⁵¹

Box 10 Risk assessment in doing research

Risk of Reprisals: Risk of reprisals against the respondent may come from employers, trafficking agents, pimps, home country authorities, or law enforcement officials. Reprisals occur both against the respondent and his or her family or children. Shame and rejection, or punishment by family or community members is also common. Betrayal by co-workers, co-residents or community members can also increase risk.

Risk of Re-traumatization: Asking a child to talk about experiences that were frightening, humiliating and painful can cause extreme anxiety. Be prepared to respond to a child's distress and highlight his or her strengths. Distress from an interview may occur during an interview, but may also emerge before or after. Breaks should be provided as needed or requested during the interview.

Source: WHO *Ethical and safety recommendations for interviewing trafficked women*, World Health Organization, 2003; Zimmerman, C., *The Health Risks and Consequences of Trafficking in Women and Adolescents*, London School of Hygiene & Tropical Medicine, 2003.

12.2 Ethical questions

Conducting research on child trafficking raises ethical questions and challenges in planning (definition of research questions, sampling), undertaking (data collection, definition of research methods) and using research:

- *In the definition of the research questions*, researchers shall clarify whether the research necessary. Does the question require the direct or indirect involvement of children? Is the question appropriate? Can the children be hurt, particularly when it refers to past exploitative or violent experience?
- *In defining the sample*, researchers shall clarify whether children can be hurt in being included in the sample or by virtue of being excluded.
- *In collecting data*, researchers shall clarify whether there are any potential physical, psychological, social or emotional risks to the subjects or those close to the subjects. What are the best research methods to be used? Who's the best person to approach children? Can confidentiality be ensured?
- *In analyzing data*, researchers shall clarify how the data will be analyzed. Will results increase the stigma attached to trafficking victims? How and where will the data be stored?
- *In sharing data and using research results*, researchers shall clarify who will use the results of the research. How will participants be consulted on the results of the research? Was the research useful to children involved? What level of confidentiality and anonymity can be offered to participants?

12.3. Misinformation as a coping strategy

When doing research on vulnerable children, such as working children, children working in the streets or trafficked children, it must be recognised that not telling the truth is but one of many coping strategies that girls and boys rely on for survival in precarious situations. Disappointment

¹⁵¹ Handbook on Action oriented Research, p.23

on the part of the researcher in reaction to children not telling the truth is to be avoided at all costs.¹⁵²

¹⁵² ILO, *Ethical Considerations When Conducting Research on Children in the Worst Forms of Child Labour in Nepal*. ILO, 2003

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[CRC Op. Prot.] Optional Protocol to the CRC on the sale of children, child prostitution and child pornography, 2000.

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